

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHANZ X. SANTOS, ppa, DENISE COLON,)	C.A. No.: 03- 12210 MLW
DENISE COLON, Individually, JESUS SANTOS,)	
)
Plaintiffs,)	
)
v.)	
)
BOB'S DISCOUNT FURNITURE; REGENT)	
HOME DELIVERY; AGNILIZ ACOSTAS;)	
RAUL SANTOS,)	
)
Defendants.)	
)

**PLAINTIFF'S OPPOSITION DEFENDANT'S MOTION TO TAKE THE
DEPOSITION OF THE MINOR PLAINTIFF JOHANZ X. SANTOS**

The minor Plaintiff's accident occurred on 03/30/02 in Springfield, Massachusetts. The minor Plaintiff, who was seven years old at the time, was playing with friends and family members when he went into the street to get a ball. At the time of the incident a truck controlled by Bob's Discount Furniture was illegally parked in front of a no parking sign on Federal Street making a delivery. The child went in front of the truck and was struck by a passing car. The driver's visibility was obstructed due to the illegally parked truck. The driver of the car, Raul Santos, testified to this fact in his deposition.

As a result of the incident, the minor child suffered a severe head injury resulting in a hospitalization from 03/30/02 to 04/04/02. He was then transferred to the Voorhees Pediatric Rehabilitation Facility where he underwent extensive rehabilitation services for his brain injury. He continues to suffer severe emotional and developmental delays as a result of his injury. His injuries include right subdural bleed, epidural hematoma and intraparenchymal bleed requiring craniotomy and evacuation of the hematoma. He suffers from post traumatic stress disorder, developmental delays and requires extensive rehabilitation therapy for speech and developmental delays.

Plaintiff's counsel has no intention of calling the minor Plaintiff as a witness at trial since he has no recollection of the details of the accident and should not be traumatized by such an event. The minor Plaintiff's parents have agreed to travel to Massachusetts from New Jersey to attend their depositions. The Defendant has the opportunity to discover all facts necessary for its defense without taking the deposition of a child who was seven years old at the time of his accident and who has no recollection of the accident. Moreover, the depositions of the driver of the truck and the car driver and passenger have already been taken. The Defendant has also been provided with the child's medical records.

The Defendant's reliance of the Second Restatement of Torts does not provide any authority for the Defendants position. The Defendant has cited no case law to support its claim because none exists. Moreover, the Restatement simply confirms the law governing the alleged comparative negligence of a child. There is no need to take the deposition of a minor victim to apply this standard, particularly when the child has no recollection of the accident, is suffering from these conditions and will not be a witness at trial.

Respectfully Submitted
By Their Attorneys,

/s/ David P. Angueira

Edward M. Swartz
BBO#489540
David P. Angueira
BBO#019610
SWARTZ & SWARTZ
10 Marshall Street
Boston, MA 02108
(617) 742-1900

CERTIFICATE OF SERVICE

I, David P. Angueira, do hereby certify that I have served a copy of the within of Plaintiff's Opposition to Defendant's Motion to Take the Deposition of the Minor Plaintiff, Johanz X. Santos upon the Defendants by mailing same, first class mail, postage prepaid, to all counsel, to wit:

Richard F. Faille, Esq.
Faille, Birrell & Daniels
22nd Floor
1414 Main Street
Springfield, MA 01144

James F. Roux, Esq.
John P. Connor, Esq.
Smith & Brink, PC
191 Chestnut Street - Suite 3D
Springfield MA 01103

/s/ David P. Angueira

David P. Angueira, BBO# 019610

Dated: March 2, 2005